

# Foster Care & Education

## *Issue Brief*

### **SCHOOL STABILITY UNDER FOSTERING CONNECTIONS: STATE LAWS AND POLICIES IMPLEMENTING SCHOOL PLACEMENT DECISIONS**

#### **Introduction**

The best interest determination that a child should stay in the same school or move to a new one is only the first step in ensuring school stability. Unless state law provides to the contrary, the school has the ultimate responsibility to allow the child to stay or be enrolled elsewhere. This issue brief **discusses the legislation, interagency collaborations, or other agreements needed to assist in implementing the best interest decisions.**

Enacted in October 2008, the “Fostering Connections to Success and Increasing Adoptions Act of 2008,” (Fostering Connections) is a comprehensive law designed to promote permanent family connections and improve the lives of youth in the child welfare system. Among other important provisions, the Act requires child welfare agencies to create “a plan for ensuring the education stability of the child while in foster care.” The Act emphasizes the importance of school stability as well as the need for collaboration between child welfare and education agencies.

This brief is part of a series of materials designed to be used together to support all stakeholders in implementing the education provisions of the Fostering Connections Act. To access the full series, please visit [The Legal Center for Foster Care and Education's Fostering Connections Toolkit](http://www.abanet.org/child/education).



### Note on Using the McKinney-Vento Act to Ensure School Stability

Under the McKinney-Vento Homeless Assistance Act,<sup>1</sup> states and Local Educational Agencies (LEAs) have systems in place to address school stability for homeless children, including those “awaiting foster care placement.” If a child is eligible for services under McKinney-Vento, the school must keep her enrolled despite a change in living placement, or, if the child seeks to enroll in a new school, the school must do so immediately, regardless of whether the child has otherwise required documentation. McKinney-Vento requires LEAs to make best interests determinations. While this varies widely across states, some children in foster care are considered McKinney-Vento eligible. In these situations, advocates must understand how variations between McKinney-Vento and Fostering Connections should be addressed.

For more information on the interaction between Fostering Connections and the McKinney-Vento Homeless Assistance Act, see

- “How Fostering Connections and McKinney-Vento can Support School Success for All Children in Out-of-Home Care,” available at [http://www.abanet.org/child/education/publications/ga\\_fc\\_and\\_mv\\_overlap\\_final.pdf](http://www.abanet.org/child/education/publications/ga_fc_and_mv_overlap_final.pdf); and
- BEST PRACTICES IN HOMELESS EDUCATION: Clearing the Path to School Success for Students in Out-of-Home Care, available at [http://www.abanet.org/child/education/publications/clearing\\_the\\_path\\_brief\\_final.pdf](http://www.abanet.org/child/education/publications/clearing_the_path_brief_final.pdf).

### Staying in the Same School

An effective way to ensure that the promise of Fostering Connections becomes a reality is to establish state legislation or guidance clarifying how the process will work and requiring school districts to keep children in the same school or enroll them promptly in a new district – whichever is in the children’s best interests. In many states, these laws will need to address existing school residency requirements. In some cases, they may also amend laws relating to school funding, to ensure that school districts are properly compensated when they educate youth who no longer live within their district or attendance area.

#### *Examples:*

A **Connecticut** statute, signed into law on June 8, 2010, requires schools to keep a student who has moved to an out-of-home placement enrolled in the same school and to treat him or her as a resident

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<sup>1</sup> 42 U.S.C. § 11301 *et seq.*

when the child welfare agency determines that remaining in that school is in the child's best interests.<sup>2</sup> Like Fostering Connections, the Connecticut law includes a presumption that it is in the child's best interests to remain in his or her school of origin.<sup>3</sup> The law requires the department to provide written notice to all parties within three days of making the decision that the child should remain with a list of the factors the department considered in making the decision.<sup>4</sup> As long as the child remains in out-of-home care, the school placement decision can be revisited at any time.<sup>5</sup>

The law also authorizes the child welfare department to remove a child from the school of origin immediately if the child's immediate physical safety is in jeopardy at that school.<sup>6</sup> If the department takes this action, it must notify the child's attorney, parents, GAL and surrogate parent on the same day.<sup>7</sup> Any party then has three business days to object to the decision.<sup>8</sup> The child welfare department must hold an administrative hearing within three business days of any objection to the removal.<sup>9</sup>

Similarly, in **New Jersey**, a new law that went into effect on September 13, 2010 establishes a presumption that when the child welfare agency – the Division of Youth and Family Services (DYFS) – places a child in a resource family home, the child will nevertheless continue to attend his or her current school.<sup>10</sup> The law clarifies that the “district of residence” for a child placed in out-of-home care is the present district of residence of the family with whom the child lived before being placed with a resource family.<sup>11</sup> That district is financially responsible for paying the child's tuition and transportation costs to the district in which he is placed.<sup>12</sup> If DYFS concludes that attending the current school does not serve the child's best interests or finds that continued enrollment in that school would pose a significant and immediate danger to the child, the child may be immediately enrolled in the resource family's school district.<sup>13</sup> At any time while the child is placed in a resource home, the child welfare agency may reconsider the school placement and make a new determination, and any party may ask the court to reconsider the best interest of the child and make appropriate orders regarding the child's school placement.<sup>14</sup>

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<sup>2</sup> CONN. GEN. STAT. ANN. § 17a-16a(b)(1) (West 2010).

<sup>3</sup> CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(A) (West 2010).

<sup>4</sup> *Id.*

<sup>5</sup> CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(B) (West 2010).

<sup>6</sup> CONN. GEN. STAT. ANN. § 17a-16a(b)(3)(C) (West 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> N.J. STAT. ANN. § 30:4C-26b(a) (West 2010).

<sup>11</sup> N.J. STAT. ANN. § 30:4C-26b(h) (West 2010).

<sup>12</sup> *Id.*

<sup>13</sup> N.J. STAT. ANN. § 30:4C-26b(b) (West 2010).

<sup>14</sup> N.J. STAT. ANN. § 30:4C-26b(e)(2) (West 2010).



A recently passed **Virginia** bill revises the Education Code to ensure a child “shall be allowed to continue to attend the school in which he was enrolled prior to the most recent foster care placement” when in the child’s best interests.<sup>15</sup>

**Texas’s** Education Code provides that youth in grades 9 through 12 have the option to complete high school at the school they were enrolled in when placed in foster care, even if the placement is outside the attendance area for the school district where the foster family resides.<sup>16</sup>

Even when no state law exists, positive collaborations between child welfare agencies and school districts can lead to positive outcomes. For more information on such collaborations, see [Making the Case: Engaging Education Partners in Addressing the Education Needs of Children in Care](#) and [Making It Work: How Child Welfare and Education Agencies Can Collaborate to Ensure School Stability for Children in Foster Care](#).

## Enrolling in a New School

Fostering Connections provides that, if remaining in the same school is not in the child’s best interests, the child welfare agency and the local educational agencies must ensure “immediate and appropriate enrollment” in a new school, with all of the educational records of the child provided to the school.<sup>17</sup> ACF Guidance specifically encourages child welfare agencies to work with their local educational agency to identify and address any barriers to “expeditious enrollment” and also “to consider further efforts that may be necessary to enroll children who must be moved across jurisdictions.”<sup>18</sup> States should also make clear the respective roles of the education and child welfare systems. Because neither the legislation nor the guidance clearly define “immediate” or “appropriate,” state law and policy can be particularly vital to meaningful implementation.

### Ensuring Immediate Enrollment

State law and policy can clarify precisely how many days constitutes “immediate” enrollment. Ideally, these laws will define “immediate” to mean that a child must be enrolled even in the absence of otherwise required records, and will also provide guidance.

#### **Examples:**

In March 2009, **Texas** amended both its Family Code and Education Code to ensure the prompt enrollment of all children in out-of-home care. Under these new laws, a caseworker must enroll a child

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<sup>15</sup> 2011 Virginia Laws Ch. 154 (S.B. 1038) (amending VA. CODE ANN. §§ 16.1-281 and 22.1-3.4, and adding § 63.2-900.3).

<sup>16</sup> TEX. EDUC. CODE ANN. § 25.001(f), (g) (Vernon 2007).

<sup>17</sup> Fostering Connections, *supra* note 1, § 204(a)(1); 42 U.S.C. § 675(1)(G)(ii).

<sup>18</sup> ACF Guidance, *supra* note 3, at 18-19.

in school “no later than the third school day after the court order is rendered to remove the child from the home and place the child in DFPS conservatorship.”<sup>19</sup>

In **Virginia**, joint policy guidance from the state’s Departments of Social Services and Education defines “immediate” as “no later than beginning of next school day after presentment for enrollment.”<sup>20</sup> Presentment for enrollment occurs when the person enrolling the child has appeared at the new school and presented the required information.<sup>21</sup> If “despite all reasonable efforts” school officials are unable to enroll the child on the next school day, they must do so on the following day and document the reasons for delay.<sup>22</sup> The guidance requires that schools enroll children in care even if they lack documents required for enrollment.<sup>23</sup> The state created a form entitled “Immediate Enrollment of Child in Foster Care Form” which the child welfare case worker submits to the school.<sup>24</sup> Using the form, the person enrolling the student certifies to the best of his/her knowledge the student’s age and that the student is in good health, free from communicable diseases, and makes other certifications, thereby assuring that the student seeking to enroll meets the minimum requirements for enrollment.<sup>25</sup>

In December 2008, state and local child welfare and education agencies in **Delaware** entered into a Memorandum of Understanding which provides that school districts must enroll a child in foster care within two school days of referral in a new school.<sup>26</sup> The school district must enroll the child even if the Department of Services for Children, Youth and Families (DSCYF) is unable to produce records, or the sending school has not yet transferred records such as previous academic records, medical records, proof of residency if all parties (child, school, parent/legal guardian/Relative Caregiver, guardian ad litem, CASA, and DSCYF staff) agree that it is in the best interest of the child to change schools using the McKinney-Vento best interest standard.<sup>27</sup>

## Defining “Appropriate” Enrollment

In determining whether a child is “appropriately” enrolled, states should consider not only whether the child has been admitted to the school, but also whether his or her educational needs are actually being met. Some factors to consider include whether the child is placed in the proper grade and classes, including general, special, advanced, or remedial education classes; whether the new school is awarding credit for work the child completed at another school, including full and partial credits; whether the child has been given the right to

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<sup>19</sup> Tex. Dep’t Family and Protective Servs. CPS Handbook 4310 (March 2009), available at

[http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_4300.jsp](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4300.jsp). See also TEX. FAM. CODE ANN. § 264.115.

<sup>20</sup> Va. Dep’t of Educ. & Va. Dep’t of Soc. Servs., Joint Guidance on School Placement for Children in Foster Care, 7 (Dec. 2, 2010) (hereinafter “Va. Joint Guidance”), available at [http://www.dss.virginia.gov/family/fc/school\\_placement.pdf](http://www.dss.virginia.gov/family/fc/school_placement.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*; see also Va. Dep’t of Ed. and Va. Dep’t of Soc. Servs., Best Interest Determination for Foster Care School Placement Form (2010), available at <http://www.dss.virginia.gov/files/division/dfs/fc/forms/032-04-0067-00-eng.doc>.

<sup>25</sup> *Id.*

<sup>26</sup> Memorandum of Understanding between the Dep’t of Ed. and the Dep’t of Servs. for Children, Youth, and their Families, 14 (Dec. 16, 2008) (hereinafter “Del. MOU”), available at <http://www.doe.k12.de.us/DDOEDSCYFMOU.pdf>.

<sup>27</sup> *Id.* at 15.



participate in all academic or extracurricular programs offered by the school and, when necessary, been given an exception from the normal timelines or program capacity rules.

**Examples:**

In **Virginia**, joint policy guidance specifically notes that “enrollment” in this context “means the child is attending classes and participating fully in school activities.”<sup>28</sup>

## Facilitating Smooth Transitions Between Schools

Under the Fostering Connections Act, state education agencies must also ensure that state and local enrollment rules (*e.g.*, requiring proof of immunization or residency) do not pose barriers to a child’s school enrollment. Thus, in some states, legislation or agreements may need to address residency requirements, enrollment documentation requirements, and deadline requirements for special classes and extracurricular activities.

Although it is important that students not be prevented from enrolling in school because of missing records, it is also important to make sure that prior education records are promptly available to the new school district. Fostering Connections explicitly requires the child’s case plan to include assurances by the child welfare agency and the local education agency that the child’s records have been provided to the school immediately upon school enrollment. State legislation or guidance can clarify the process and timelines for records transfers. Additionally, the ACF Guidance itself recognizes that further support may be necessary or helpful to such transfers, citing as an example the creation of education “passports” – education files for each child including all enrollment documents, which can follow the child from school to school.<sup>29</sup> States will need to consider what possible additional supports or services they will need to ensure prompt enrollment.

**Examples:**

In May 2007, the **Texas** Education Code was amended to provide that a school district must enroll a child without a birth certificate, other proof of identity, or a copy of the records from the last school attended if the child is in DFPS conservatorship.<sup>30</sup> The caseworker then has 30 days to provide the

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<sup>28</sup> Va. Joint Guidance, *supra* note 23, at 7.

<sup>29</sup> ACF Guidance, *supra* note 3, at 18-19.

<sup>30</sup> TEX. EDUC. CODE ANN. § 25.002(g) (Vernon 2007).

required records.<sup>31</sup> If a child is transferring from another school district, the caseworker provides the new school with the name and address of the original school to facilitate prompt transfer.<sup>32</sup>

A **Connecticut** law enacted in June 2010 requires the school or origin to transmit all essential education records, including special education records, and documents needed to determine class placement and appropriate educational services, within one business day of receiving notice of the Department of Children and Families' decision to change the child's school placement.<sup>33</sup>

In **Virginia**, joint policy guidance from the state's Departments of Social Services and Education creates a form allowing the case worker to provide information necessary to ensure a smooth transition and educational continuity for the child, including noting whether the child has an IEP and/or 504 plan, the name of the last school attended, and who the parent for special education purposes is.<sup>34</sup> Within 30 days, the child welfare agency must obtain and give to the school any documents normally required for enrollment missing when the student first enrolled.<sup>35</sup> Additionally, both schools must expedite the transfer of all the student's records.<sup>36</sup>

In December 2008, state and local child welfare and education agencies in **Delaware** entered into a Memorandum of Understanding which provides that the school district must enroll the child even if the Department of Services for Children, Youth and Families (DSCYF) is unable to produce records, or the sending school has not yet transferred records such as previous academic records, medical records, proof of residency if all parties (child, school, parent/legal guardian/Relative Caregiver, Guardian ad litem, CASA, and DSCYF staff) agree that it is in the best interest of the child to change schools using the McKinney-Vento best interest standard.<sup>37</sup> School districts must also transfer school and medical records from a sending school immediately (within three school days during the school year, or five working days in the summer) to a new school for a child in foster care who is transferring schools.<sup>38</sup>

## Conclusion

Fostering Connections holds great promise to promote school stability for youth in care. The Act cannot meet this promise, however, without addressing the vital role of the education system in supporting school stability. Through legislation and policy guidance, states can establish clear mandates on the education system and can further develop the positive collaborations between child welfare and education agencies to meet the needs of youth in their care.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> CONN. GEN. STAT. ANN. § 17a-16a(c)(2) (West 2010).

<sup>34</sup> Va. Joint Guidance, *supra* note 23, at 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Del. MOU, *supra* note 29, at 15.

<sup>38</sup> *Id.* at 15-16.